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July 1, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E.05-4 – Complaint of Verizon New England, Inc. d/b/a Massachusetts Concerning Customer Transfer Charges Imposed By Broadview Networks, Inc.

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced matter is a copy of an Order dated June 29, 2005, in the Verizon New York Complaint against Broadview Networks concerning Transfer Charges. Verizon Massachusetts respectfully requests that the Department take administrative notice of this decision.

Thank you for your assistance.

Very truly yours,

Barbara Anne Sousa

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cc: Attached D.T.E. 05-4 Service List

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on June 15, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 05-C-0066 - Complaint and Petition of Verizon New York Inc. Concerning Service Transfer Charges Imposed by Broadview Networks, Inc.

ORDER GRANTING, IN PART, VERIZON NEW YORK INC.'S COMPLAINT AND PETITION ON BROADVIEW NETWORKS, INC.'S CUSTOMER SERVICE TRANSFER CHARGES

(Issued and Effective June 29, 2005)

BY THE COMMISSION:

INTRODUCTION

On January 18, 2005 Verizon New York Inc. (Verizon) filed a complaint and petition with the Commission alleging that Broadview Networks, Inc. (Broadview) imposed unlawful carrier service transfer charges when a local exchange customer is transferred from Broadview to another competitive local exchange carrier (CLEC) or to an incumbent local exchange carrier (ILEC) such as Verizon. In this order the Commission grants, in part, Verizon's complaint and petition and directs Broadview to file appropriate tariff revisions to eliminate its customer transfer charges.

BACKGROUND

Broadview's access services tariff[1] currently contains a carrier service transfer charge that Broadview imposes whenever a customer disconnects local service from Broadview and switches to another local exchange carrier. This charge is applied on a per-line basis for each local service transfer request received by Broadview. The minimum and maximum per line charges are $5.00 to $20.00 for Electronic Processing and $5.00 to $35.00 for Manual Processing. The currently effective per line charges are $9.01 for Electronic Processing and $26.56 for Manual Processing. These are the same rates currently in effect for Verizon's Service Order Charge and Manual Processing Surcharge, respectively.

PLEADINGS

In its January 18, 2005 filing, Verizon petitioned the Commission pursuant to §§96(1), 96(3), and 97 of the Public Service Law. Verizon argued that the Commission has already addressed the issue of customer service transfer charges when it granted a similar petition and complaint filed by Verizon against TC Systems, Inc. in February, 2004.[2] Verizon claims that the Commission has previously ruled that any customer service transfer costs of the type that Broadview claims to incur are properly regarded as retail costs that should be recovered, if at all, in retail rates. Verizon requests that the Commission

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[1] Broadview Networks, Inc., PSC No. 3 - Access, Section 9 - Miscellaneous Administrative Charges, Paragraph 9.1 - Service Transfer Charge, 2nd Revised Page No. 66, Effective October 7, 2003.

[2] Case 03-6-0636, Order Granting Verizon's Petition and Complaint (issued February 13, 2004).

direct Broadview to cancel the service transfer charge provisions of its tariff and, pending a final ruling, also reduce those charges to zero on a temporary basis.

Verizon argues that the TC Systems Order clarified the issue in question that service transfer costs are properly regarded as retail costs that should be recovered in retail rates. This is demonstrated by the fact that Broadview would incur exactly the same costs if one of its customers disconnected service from Broadview without opening a new account with another carrier. In view of this fact, Verizon argues that any termination costs cannot be considered to be caused by the fact that Verizon is becoming the customer's service provider.

Verizon further states that its own wholesale charges conform to these principles. When a customer migrates from Verizon to a facilities-based CLEC, Verizon does not impose any charge on that carrier, even though Verizon may incur certain administrative and other costs in connection with the migration. Verizon argues that it imposes wholesale charges only when it performs a discrete wholesale service in connection with a transfer. For example, when a Verizon customer switches to a non-facilities-based CLEC that seeks to serve the customer using Verizon's loop (and its own switch), Verizon must perform a wholesale service known as a "hot cut" in order to provide the CLEC with access to the loop. The charges imposed by Verizon in such a case apply to, and recover the cost of the "hot cut," not the customer transfer.

Verizon argues that, even if it were proper to recover service transfer costs in wholesale rates, Broadview has not demonstrated that the level of its charges is reasonable, as required by §91(1) of the Public Service Law. While the Commission has generally allowed CLECs to set their rates at comparable levels to those charged by incumbent carriers for the same or similar services, Verizon further argues that, in this case, it has no comparable charge because it does not impose similar charges for customer service transfers.

Broadview responds that Verizon has misperceived and misapplied the law, that the complaint and petition should be denied, and that Verizon should be ordered to pay Broadview's tariffed charges which Verizon has refused to do for more than a year.

Broadview acknowledges that the TC Systems Order found that costs incurred by a carrier in facilitating the transfer of a customer from its network to the network of another carrier were more appropriately recovered in retail rates or in up front service connection charges. However, Broadview argues that the Commission's ruling was issued in the context of a rate which mirrored Verizon's rates for performing "hot cuts" and was predicated upon a finding that Verizon performed most of the physical network activity necessary for a customer transfer under those circumstances.

Broadview claims that its service transfer charges are administrative rather than network-related and that both charges are designed to recover costs associated with activities undertaken by Broadview solely on Verizon's behalf.

For example, Broadview claims that discrete tasks are performed when Verizon wins a customer back from Broadview: it provides Verizon with the customer's service record (CSR) through the Broadview web center. Verizon, having confirmed the identity of the customer, submits a local service request (LSR) electronically to Broadview. The LSR is either confirmed or placed in jeopardy for reasons of data flaws by Broadview or it may be modified or cancelled by Verizon. Once an LSR is confirmed, Broadview issues a firm order commitment, having inputted a service order into its internal system to transfer the customer. Broadview then deletes associated switch translations and facilitates number porting. Broadview claims that Verizon's service order charge is designed to recover costs similar to Broadview's "Electronic Processing" charge.

Further, the "Manual Processing" component of Broadview's service transfer charge is intended to recover the additional costs Broadview incurs when Verizon declines to utilize Broadview's electronic processes.[3] At a minimum, Broadview urged the Commission to uphold the "Manual Processing" element of Broadview's service transfer charges so that Verizon is not able to force Broadview to incur additional costs when Verizon does not use its electronic system.

On April 4, 2005 Verizon submitted its reply comments which further reiterated its position that Broadview's service transfer charges are invalid under the TC Systems Order. Broadview has not demonstrated the level of any costs that it incurs and the dispute over the use of Broadview's web center does not justify the imposition of a service transfer charge. Verizon argues that Broadview does not perform any tasks comparable to those for which Verizon imposes service order or manual intervention surcharges, and that, in any case, such charges are never applied when Verizon loses a customer to another carrier.

Verizon does not challenge Broadview's contention that some administrative activities may be performed in connection with the loss of a customer, but claims that Broadview incurs similar costs when a customer otherwise discontinues telephone

[3] Broadview supports a web-based customer service record/local service request system which permits Verizon to identify and pull records without Broadview's intervention and submit service requests directly into Broadview's system.

service. Verizon further argues that even if Broadview was entitled to impose charges associated strictly with a "winback" by Verizon, it should have to justify the amount of the charge by providing proof of its costs, which Verizon believes are negligible. Since its charges are not comparable to Broadview's, the doctrine permitting CLECs to adopt comparable Verizon rates is not applicable here. Broadview would have to rely on its own cost studies which it has not provided.

Lastly, Verizon argues that the dispute over the use of Broadview's web center does not justify the imposition of a service transfer charge, pointing out that the Commission's Phase II End-User Migration Guidelines[4] specifically authorize the use of e-mail to transmit requests for customer service information and records and LSRs in connection with customer migrations between CLECs and from CLECs to Verizon.

On April 18, 2005 Broadview submitted its reply comments, claiming that Verizon has gratuitously imposed additional costs on them by refusing to use the electronic processes established by Broadview for facilitating carrier requests for CSRs and the submission of LSRs. Broadview acknowledges that it is Verizon's choice whether to utilize the manual or electronic process, however, it argues that it should be able to recover any additional costs imposed on it when Verizon declines to use the electronic process.

Broadview also claims that its service transfer charges are cost justified because the costs recovered by its Electronic Processing and Manual Processing Service Transfer Charges are identical to those Verizon recovers through its Service Order Charge and Manual Intervention Surcharge.

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[4] Case 00-C-0188, Order Adopting Phase II Guidelines (issued June 14, 2002).

DISCUSSION

In the past, rather than requiring CLECs like Broadview to submit cost studies to verify individual charges, the Commission has allowed CLECs to set rates based on ILEC rates for comparable services. However, because Verizon does not have a separate charge for a customer transfers, Broadview based its charges on Verizon's purportedly analogous Service Order Charge and Manual Intervention Surcharges. The activities for which Verizon assesses service order charges and manual intervention surcharges are not entirely comparable to the tasks that Broadview performs when it loses a customer to Verizon. Therefore, Broadview should not impose Verizon's rates.

On the other hand, Verizon's argument that customer service transfer costs should only be recovered in retail rates is not fully supportable. Broadview has acknowledged that there are certain retail-like costs that are incurred whether its customer disconnects entirely or goes to another carrier. However, Broadview has taken the position that there are a number of functions that it must perform solely in conjunction with a Verizon "winback" that it does not perform when a customer simply disconnects service. These tasks, transmitting a CSR, including providing a CSR or circuit identification number to Verizon, processing and verifying an LSR, performing queries associated with inaccurate or incomplete LSRs, issuing a firm order commitment date, and responding to status requests, are not performed if a customer simply disconnects service.

While we recognize that there may be some costs associated with performing such functions, Broadview has not quantified those costs[5], nor does Verizon charge other carriers in a similar situation. While Broadview should not be precluded

[5] In fact, we believe the cost of a CSR may be negligible.

from filing detailed cost data to support the introduction of a customer service transfer charge specifically designed to recover the costs of performing these administrative tasks,[6] in the interim Broadview should file appropriate tariff revisions eliminating its customer service transfer charges.

CONCLUSION

The Commission grants, in part, Verizon's complaint and petition and directs Broadview to file appropriate tariff revisions to eliminate its customer service transfer charges consistent with this order.

The Commission orders:

1. Broadview Networks, Inc. is directed to file appropriate tariff revision to eliminate its customer transfer charges within 20 days of the date of this order.

2. Verizon York Inc.'s request to establish a temporary rate of zero is denied as moot.

3. The requirement of §92(2) of the Public Service Law as to newspaper publication of the revisions directed in Clause 1 is waived.

4. This proceeding is closed.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

[6] In order to avoid any suggestion of cost over recovery, Broadview should demonstrate that the costs associated with customer transfers are not already built into existing connection charges.